UNITED STATES PATENT AND TRADEMARK OFFICE

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10/797,354	03/10/2004	Stefan Moll	BBMG-100US	4286

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EXAMINER
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1   UNITED STATES PATENT AND TRADEMARK OFFICE
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3
4   BEFORE THE BOARD OF PATENT APPEALS
5   AND INTERFERENCES
6   _____
7
8   *Ex parte* STEFAN MOLL,
9   GERHARD BOCK,
10   DIRK MOELLER, and
11   SANDOR DOLGOS
12   _____
13
14   Appeal 2010-001747
15   Application 10/797,354
16   Technology Center 3600
17   _____
18
19   Decided: May 4, 2010
20   _____
21
22   Before ALLEN R. MACDONALD, *Vice Chief Administrative Patent Judge,*
23   ANTON W. FETTING, and BIBHU R. MOHANTY, *Administrative Patent*
24   *Judges.*
25   FETTING, *Administrative Patent Judge.*

26   DECISION ON APPEAL

1   STATEMENT OF THE CASE

2   Stefan Moll, Gerhard Bock, Dirk Moeller, and Sandor Dolgos

3   (Appellants) seek review under 35 U.S.C. § 134 (2002) of a final rejection of

4   claims 1-20, the only claims pending in the application on appeal.

5   We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)

6   (2002).

7   SUMMARY OF DECISION[1]

8   We REVERSE.

9   THE INVENTION

10   The Appellants invented a dialysis station using a central server and a

11   patient place, where one can monitor the treatment at each patient place from

12   a physician place and intervene into this treatment, and where a dialogue

13   between the physician place and the patient place is possible via a data

14   network (Specification 2:7-11).

15   An understanding of the invention can be derived from a reading of

16   exemplary claim 1, which is reproduced below [bracketed matter and some

17   paragraphing added].

18   1. A dialysis system for implementing a course of treatment for
19   a patient as instructed by a medical personnel and executed by a
20   person, the dialysis system comprising:
21   [1] at least one patient place having

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[1] Our decision will make reference to the Appellants' Appeal Brief ("App.
Br.," filed April 3, 2009) and Reply Brief ("Reply Br.," filed August 24,
2009), and the Examiner's Answer ("Ans.," mailed June 24, 2009).

1   a dialyzer,

2   a video terminal, and

3   an ID input device for inputting an identification;

4   [2] a central server including a data base; and

5   [3] at least one physician place equipped with a video terminal,

6   [4] said video terminals of the at least one patient place and the
7   at least one physician place and the server being interlinked
8   with each other and configured such that

9   information on the course of the treatment at a selected
10   patient place is callable and

11   instructions for a selected patient place are adapted to be
12   input;

13   [5] wherein the system is configured such that

14   information on the execution of an instruction can be
15   input at the patient place and

16   the execution of an instruction is acknowledged

17   by the executing person acknowledging his or her
18   identity at the ID input device.

19   THE REJECTION

20   The Examiner relies upon the following prior art:

Hogard	US 6,284,131 B1	Sep. 4, 2001
Ford	US 6,269,340 B1	Jul. 31, 2001
Fujimoto	US 5,339,821	Aug. 23, 1994

21   Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as unpatentable

22   over Hogard, Ford, and Fujimoto.

<div style="text-align:center">ISSUE</div>

The issue of whether the Examiner erred in rejecting claims 1-20 under 35 U.S.C. § 103(a) as unpatentable over Hogard, Ford, and Fujimoto turns on whether the art describes or shows that a system configuration in which execution of an instruction is acknowledged by the executing person acknowledging his or her identity at an ID input device (limitation [5] *supra*). This issue reduces down to whether the Examiner's construction of the word "acknowledged" was reasonable in light of the Specification. The Examiner effectively construed "acknowledging" as implied.

<div style="text-align:center">FACTS PERTINENT TO THE ISSUES</div>

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Hogard

 01. Hogard is directed to improvements in kidney dialysis machines. Hogard 1:13-14.

Ford

 02. Ford is directed to customizable drug library software for infusion pumps that acts either by itself or interacts with an automatic drug recognition capability based upon a machine readable label or data carrier. Ford 2:54-62.

 03. Ford describes access to the computer interface program itself being permitted only to persons who are identified in the user file

and who provide the private password assigned to them. Ford
18:60-67.

04.   Ford describes how, whenever a user creates or modifies a file,
the program erases the entries in approval field and updates the
information in author field. Thus, the act of modifying a file after
it has been approved for loading into a pump cancels the approval.
Before that file can be loaded into a pump it must again be
authorized by an appropriate person. Ford 20:8-20.

Fujimoto

05.   Fujimoto is directed to a home medical system by which a
patient can measure the daily condition of disease or health at
home to undergo a check or an inquiry diagnosis by a medical
specialist. Fujimoto 1:66 - 2:4.

ANALYSIS

Claim 1 recites a dialysis system physically spread over three places
with a communication link connecting them. Limitation [5] recites that as
information on the execution of an instruction is input at the patient's place,
the execution of that instruction is acknowledged by the executing person
acknowledging his or her identity at the ID input device.

The rejections are over obviousness and the dispositive issue is whether
the Examiner presented a prima facie case as to the acknowledgement in
limitation [5] of claim 1. A similar limitation is in each of the remaining
independent claims 11 and 17 as well. We find the Examiner has not done
so.

1   The Examiner cites Ford 18:60-68 (Answer 5) as support in the rejection

2 and adds Ford 20:8-20 as support in the Answer's Response section at 11.[2]

3 Ford describes using a software library to direct an electronic medical

4 infusion pump. These portions describe conventional password protection

5 (FF 03) and the use of such protection when security has been potentially

6 breached (FF 04). In both instances, the user information is provided prior

7 to executing an instruction, to prevent unauthorized access to those

8 instructions.

9   In contrast, the claim requires that the execution of an instruction be

10 acknowledged by the entry of user identification, i.e. after rather than before

11 execution. The reason is simple and made clear at Specification 10:20 -

12 11:11. Unlike Ford, which uses software instructions which drive a

13 computer's operations automatically, necessitating stringent precautions

14 before those instructions commence, the instructions in claim 1 are meant to

15 be performed by a human operator in the operation of a machine. The

16 acknowledgement in claim 1 is the acknowledgement that the operator

17 actually performed what was instructed, since the machine cannot

18 necessarily confirm such performance automatically

19   The Examiner acknowledges as much at the Response section at Answer

20 11, since the portion of Ford cited in the rejection analysis only speaks to

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[2] The Examiner expresses the finding regarding limitation [5] as a taking of
Official Notice (Answer 5) but immediately adds that this is evidenced by
Ford. Thus, we take the Examiner's Official Notice to be that of the practice
described by Ford, rather than the specific language recited in the claim. We
agree that Ford's use of user identifiers and passwords as gatekeepers for
sensitive computer operations is well known, but as we find *supra*, this is
not what the claim recites.

1   conventional pre-authorization password control, but then the Examiner

2   finds that in the particular instance in which Ford's instruction file is edited,

3   Ford requires entry of the user identification and password prior to the edits

4   being loaded and that this acknowledges the original file having been once

5   loaded at a prior time. While this certainly implies that such a file was

6   loaded at some earlier time, it does not acknowledge that loading.

7   To acknowledge in the context of claim 1 is to express recognition of.[3]

8   The existence of an implication of some circumstance at some point in the

9   past is not the expressing recognition of that circumstance.

10 Acknowledgement requires a recognition between the act reported on and

11 the reporting that mere inherent implication does not. Certainly such a

12 construction of inherent implication has nothing in common with the use of

13 that term in the Specification, and although limitations are not imported

14 from the Specification, claim construction must be reasonable in light of the

15 Specification.

16   The Examiner also apparently concludes that limitation [5] can be

17 effectively anticipated by any computer including that in Ford because the

18 use of the word "configured" means that so long as a computer can be

19 programmed to perform a step, that computer reads on such a step. We find

20 that contrary to the Examiner's analysis at Answer 11, the claim does not

21 recite "can be configured", but rather "is configured." Thus, the

22 configuration recited must be found in the prior art to support a prima facie

23 case.

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[3] *American Heritage Dictionary of the English Language* (4th ed. 2000).

1   As this issue disposes of the case, we need not reach the Appellants'

2 remaining arguments.

3   **CONCLUSIONS OF LAW**

4   The Examiner erred in rejecting claims 1-20 under 35 U.S.C. § 103(a) as

5 unpatentable over Hogard, Ford, and Fujimoto.

6   **DECISION**

7   Our decision is that the rejection of claims 1-20 under 35 U.S.C.

8 § 103(a) as unpatentable over Hogard, Ford, and Fujimoto is not sustained.

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10   <u>REVERSED</u>

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13
14 mev

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